

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
(Indianapolis Division)**

**RED BARN MOTORS, INC.,
PLATINUM MOTORS, INC., and
MATTINGLY AUTO SALES, INC.,
Individually, and on behalf of other
members of the general public
similarly situated**

v.

**COX ENTERPRISES, INC.,
COX AUTOMOTIVE, INC.,
NEXTGEAR CAPITAL, INC.,
F/K/A DEALER SERVICES
CORPORATION, successor by merger
with Manheim Automotive Financial
Services, Inc., and JOHN WICK**

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

DOCKET NO. 1:14-cv-01589-TWP-DKL

JOINT MOTION TO MODIFY CASE MANAGEMENT PLAN

NOW INTO COURT come Plaintiffs, Red Barn Motors, Inc., Platinum Motors, Inc., and Mattingly Auto Sales, Inc., Individually, and on behalf of other members of the general public similarly situated (collectively, the “Plaintiffs”) and Defendants Cox Enterprises, Inc., Cox Automotive, Inc., Nextgear Capital, Inc., F/K/A Dealer Services Corporation, successor by merger with Manheim Automotive Financial Services, Inc., and John Wick (collectively, the “Defendants” or with the Plaintiffs, the “Parties”), and respectfully request that the Court modify the Case Management Plan (R. Doc. 144) (the “CMP”) in this matter to allow a short period of class merits discovery following this Court’s ruling on class certification.

The Plaintiffs filed the Verified Amended Complaint (R. Doc. 117) in this matter on March 11, 2016 adding class-wide allegations. Pending before the Court are the Defendants’ Motion to Dismiss (R. Doc. 126) and Plaintiffs’ Motion to Certify Class and Appointment of Class Counsel

(R. Doc. 153). Briefing on both motions is complete. Trial is currently scheduled for May 8 through 19, 2017.

The Parties have been working together to timely complete discovery prior to the December 20, 2016 deadline for completion of discovery established by the CMP, focusing on issues relevant to the named plaintiffs and class certification.¹ However, the CMP does not designate an additional time period for class merits discovery in the event a class is certified. The Parties agree that such a period will be necessary if the Court grants Plaintiffs' motion for class certification.

Accordingly, the Parties propose to establish the following schedule for class merits discovery: (a) The Plaintiffs shall serve written discovery relating to class merits issues within 15 days following entry of an order granting certification of a class; and (b) The Defendants shall respond to such discovery within the time limits allowed by the Federal Rules of Civil Procedure, subject to any extensions agreed upon by the Parties if needed. In addition, the Parties propose that to the extent that any additional depositions are necessary following class certification, the Parties will work together to schedule such depositions at the earliest practicable date, subject to the limitation on the number of depositions established by the Federal Rules of Civil Procedure.

This motion is filed without prejudice to the Parties' right to seek broader changes to the Case Management Plan should such changes be necessary.

¹ Discovery seeking the identification of all class members is generally not allowable prior to class certification. *See, e.g., Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 98 S. Ct. 2380, 57 L. Ed. 2d 253 (1978) (the names and addresses of potential class members do not fall within the scope of allowable discovery under Federal Rule of Civil Procedure 26). The parties agree that any discovery seeking such identification, as well as documents relating to each potential class member and their transactions with NextGear, would be improper prior to class certification and a waste of the parties' resources.

WHEREFORE, the Parties jointly request that this Court enter the attached proposed Order reflecting the above-described modifications to the Case Management Plan. In the alternative, the Parties respectfully request that the Court hold a brief status conference to address the issues raised herein.

Respectfully submitted,

/s/ Kerry A. Murphy

Gladstone N. Jones (La. Bar #22221) (*pro hac vice*)
Lynn E. Swanson (La. Bar #22650) (*pro hac vice*)
Kerry A. Murphy (La. Bar #31382) (*pro hac vice*)
JONES, SWANSON, HUDDALL & GARRISON, L.L.C.
601 Poydras Street, Suite 2655
New Orleans, Louisiana 70130
Telephone: (504) 523-2500
Facsimile: (504) 523-2508

James M. Garner (La. Bar #19589) (*pro hac vice*)
Ryan D. Adams (La. Bar #27931) (*pro hac vice*)
Matthew M. Coman (#23613) (*pro hac vice*)
SHER, GARNER, CAHILL, RICHTER, KLEIN & HILBERT, L.L.C.
909 Poydras Street, Suite 2800
New Orleans, Louisiana 70112
Telephone: (504) 299-2100
Facsimile: (504) 299-2300

Cassie E. Felder (La. Bar #27805) (*pro hac vice*)
LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD
9311 Bluebonnet Blvd., Suite A
Baton Rouge, Louisiana 70810
Telephone: (225) 291-1990
Facsimile: (504) 310-9195

Kathleen A. DeLaney (#18604-49)
DeLaney & Delaney LLC
3646 North Washington Blvd.
Indianapolis, IN 46205
Telephone: (317) 920-0400
Facsimile: (317) 920-0404

Attorneys for Plaintiffs

and

/s/ Tracey K. Ledbetter
David J. Jurkiewicz (18018-53)
Paul D. Vink (23785-32)
BOSE McKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000
(317) 684-5173 fax
djurkiewicz@boselaw.com
pvink@boselaw.com

Jason S. McCarter (*pro hac vice*)
Tracey K. Ledbetter (*pro hac vice*)
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street N.E., Suite 2300
Atlanta, GA 30309
(404) 853-8000
(404) 853-8806 fax
jason.mccarter@sutherland.com
tracey.ledbetter@sutherland.com

***Attorneys for Defendants Cox Enterprises, Inc.,
Cox Automotive, Inc., NextGear Capital, Inc. f/k/a
Dealer Services Corporation, and John Wick***

CERTIFICATE OF SERVICE

I do hereby certify that I have, on this 20th day of December, 2016, served a copy of the foregoing upon all counsel of record by CM/ECF filing.

/s/ Kerry A. Murphy
Kerry A. Murphy